

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LUIS VASQUEZ,

Plaintiff,

v.

JONAS TROCHINSKI,

Defendant.

ORDER

11-cv-474-slc

Plaintiff Luis Vasquez is proceeding in this case on his claim that defendant violated his rights under the First Amendment by issuing him a false conduct report in retaliation for plaintiff threatening to file a grievance and lawsuit against defendant. On June 11, 2012, defendant filed a motion for summary judgment. Plaintiff's brief in opposition to the motion is due July 11, 2012. Now plaintiff has filed a motion for an extension of time to respond to defendants' motion as well as a motion to stay this case pending a decision by the court on his motion to appoint counsel. *See* dks. 12, 21 and 22.

With respect to plaintiff's motion for appointment of counsel, this court would appoint a lawyer to almost every pro se plaintiff if lawyers were available to take these cases. But they are not. Most lawyers do not have the time, the background or the desire to represent pro se plaintiffs in a pro bono capacity, and this court cannot make them. So the court only appoints counsel in cases where there is a demonstrated need, using the appropriate legal test.

In deciding whether to appoint counsel, I must first find that plaintiff has made a reasonable effort to find a lawyer on his own and has been unsuccessful or that he has been prevented from making such an effort. *Jackson v. County of McLean*, 953 F.2d 1070 (7th Cir. 1992). To prove that he has made a reasonable effort to find a lawyer, plaintiff must give the

court the names and addresses of at least three lawyers that he asked to represent him on the issues on which he has been allowed to proceed and who turned him down. Plaintiff has complied with this preliminary requirement.

The next question is whether plaintiff meets the legal standard for appointment of counsel. Litigants in civil cases do not have a constitutional right to a lawyer; federal judges have discretion to determine whether appointment of counsel is appropriate in a particular case. *Pruitt v. Mote*, 503 F.3d 647, 654, 656 (7th Cir. 2007). They exercise that discretion by determining from the record whether the legal and factual difficulty of the case exceeds the plaintiff's demonstrated ability to prosecute it. *Id.* at 655.

In his motion, plaintiff reports that he suffers from serious mental illness and ongoing depression. Plaintiff further states that he believes this is a complex case and that his mental health difficulties will make it very difficult to effectively prosecute his case. Plaintiff also believes that a lawyer would be able to better conduct discovery, depose witnesses and secure expert witnesses testimony. Although there is no doubt that a lawyer would be able to help plaintiff in these ways, at this stage of the proceedings it is simply too early to tell if plaintiff lacks the ability to litigate his case. Although plaintiff argues that he has no legal knowledge and suffers from mental illness, plaintiff's filings have been clear and appropriately directed. There is nothing in the record to suggest that plaintiff's is incapable of gathering and presenting evidence to prove his claims. Although plaintiff may be lacking in legal knowledge and skill, this handicap is almost universal among pro se litigants.

The court will try to make litigating this case as easy for plaintiff as possible. The facts of this case are pretty straightforward, they are within plaintiff's personal knowledge, and the

law governing plaintiff's claims was explained to him in the August 23, 2011 order granting him leave to proceed. In addition, in the October 21, 2011 pretrial conference order, plaintiff was provided a copy of the procedures to use to prove his claims, which were written for the very purpose of helping pro se litigants understand how federal civil cases work in this court. Plaintiff is encouraged to re-read the October 21, 2011 pretrial conference order. There is no way of knowing yet if plaintiff's case will go to trial. Many cases are resolved before trial, either on dispositive motions or through settlement. If the case does go to trial, the court will issue an order about two months before the trial date describing how the court conducts a trial and explaining to the parties what written materials they are to submit before trial. Many cases are resolved before trial, either on dispositive motions or through settlement. If the case does go to trial, the court will issue an order about two months before the trial date describing how the court conducts a trial and explaining to the parties what written materials they are to submit before trial. Plaintiff's mental health issues may present a legitimate concern, but he has not yet shown that they have affected his litigation of this case. As this case progresses, it might become clear that appointment of counsel is required, but this is not clear right now, so for now I will deny plaintiff's motion. Plaintiff is free to renew his motion at a later date.

Turning to plaintiff's motion for extension of time to file his response to defendant's motion for summary judgment, plaintiff requests an extension of time to August 10, 2012. In his motion, plaintiff says that he bases his request for more time on the reasons stated in his motion for appointment of counsel, those being his mental health issues and the perceived complexity of his case. Although plaintiff suffers from mental health challenges and lacks legal knowledge, the facts of the case are within plaintiff's personal knowledge and plaintiff was

provided with the court's procedures, which provide in detail what he needs to do to properly defend against defendant's motion for summary judgment. Plaintiff should focus on preparing his responses to defendant's proposed findings of fact, his own proposed findings of fact and evidence supporting those facts, as explained in the court's procedures for briefing summary judgment motions that he has previously been provided. In preparing his summary judgment response, plaintiff should rely on the factual evidence gathered in discovery to prove his claims. This case depends largely on the facts surrounding plaintiff's retaliation claim. Plaintiff should already have or be able to obtain his own records to corroborate his claim. I encourage plaintiff to consult the summary judgment procedures provided to him with the pretrial conference order.

Because the court's calendar allows for a short extension of the deadlines, plaintiff will now have until July 25, 2012 to submit his materials in opposition to defendant's motion for summary judgment in this case. Defendant will have until August 6, 2012, to reply.

ORDER

IT IS ORDERED that

1. Plaintiff Luis Vasquez's motion for appointment of counsel, dkt. 12, is DENIED without prejudice.

2. Plaintiff's motion for extension of time to file his brief in opposition to defendant's motion for summary judgment, dkt. 21, is GRANTED in part. Plaintiff's summary judgment response deadline is moved to July 25, 2012. Defendant may have until August 6, 2012 in which to file his reply.

3. Plaintiff's motion for stay pending a decision on his motion for appointment of counsel, dkt. 22, is DENIED as moot.

Entered this 5th day of July, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge